



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर शुल्क भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)28/A-II/2017-18  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-249-17-18  
दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 1-2-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-01/20/AC/Omkar/16-17 Dated 16.02.2017  
Issued by Assistant Commr STC, Service Tax, Div-I, Ahmedabad

घ अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

### M/s. Omkar Corporation Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

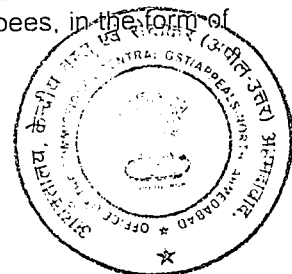
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू, मेन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

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crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फॉर्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्वयं प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधे) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है. द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है. बशर्त कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्तें यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ें एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

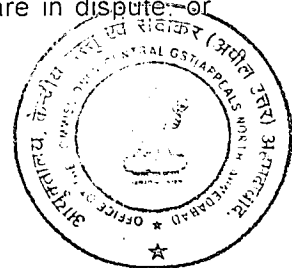
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.



**ORDER - IN - APPEAL**

M/s. Omkar Corporation, A-7, Unique City Homes, Nr. Prasang Party Plot, Ghatlodia, Ahmedabad 380 061 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.SE-01/20/AC/Omkar/2016-17 dated 16.02.2017 (henceforth, "impugned order") passed by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad (henceforth, "adjudicating authority").

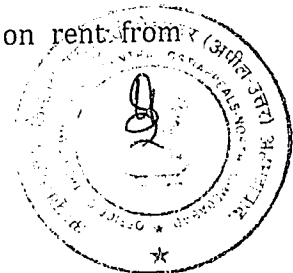
2. The facts of the case, in brief, are as follows. In a preventive search conducted at the site office of appellant's residential cum commercial project 'Shivashrya Residency', KIRC College Road, Opp. Hotel Sindbad, Kalol on 07.02.2014, a personal diary (kuchcha chitha) was recovered that revealed that the appellant had collected lot of cash from customers which was not declared in their ST-3 returns filed. As per statement of Shri Mansukhbhai B Patel, Partner of Omkar Corporation recorded on 14.03.2014, they had received Rs.4,84,93,851/- in cash and Rs.5,24,54,250/- in cheque (total Rs.10,09,48,101), whereas, service tax had been paid for a lesser income. A service tax liability of Rs.6,91,505/- was worked out in light of this revelation for the period **Oct-2010 to Mar-2012** considering the amount collected as per diary and that declared in the ST-3 returns for the stated period.

2.1 Further, it was noticed that appellant had not discharged the service tax liability of **Rs.76,105/-** on a renting income of Rs.6,15,739/- shown in the balance sheet for the year 2014-15. A short payment of service tax to the tune of **Rs.19,823/-** was also detected in respect of GTA services received by the appellant during 2012-13 and 2014-15.

2.2 A show cause notice was issued in the matter on 14.12.2016 raising a demand of **Rs.7,87,433/-** (Rs.6,91,505 + Rs.76,105 + Rs.19,823) and it came to be decided in the impugned order whereby adjudicating authority, out of total demand of Rs.7,87,433/- confirmed the service tax demand of **Rs.7,83,602/-** (Rs.6,91,505 + Rs.72,274 + Rs.19,823), alongwith interest, and imposed penalties under section 78 and various sub-sections of section 77 of the Finance Act, 1994. A late fee of Rs.6300/- was also ordered to be paid by the appellant in terms of section 70(1) of the Finance Act, 1994 for late filing of ST-3 returns for the period Oct-2010 to Sep-2013. The appellant has disagreed with the impugned order and filed this appeal.

3. The grounds of appeal, in brief, are as follows-

3.1 Appellant states that they had accepted that some transactions were not recorded in the books of account and agreed to pay the differential tax liability. Appellant further states that to confirm demand of Rs.72,274/- on rent from residential flats is also an error.



3.2 In the additional submissions made vide letter dated 01.12.2017, appellant states that they had taken on record all entries of diary in the books of account on 07.02.2014 (*date of search*), paid service tax of Rs.13,35,174/- and filed ST-3 returns of Oct-2013 to Mar-2014 period on 29.09.2014. As per appellant, adjudicating authority has considered the Challan for Rs.1,25,231/- only and not the other Challan for Rs.12,09,943/-, although both are shown in the ST-3.

3.2.1 Appellant has also attached reconciliation of amount shown in diary, ledger copy of cash book as on 07.02.2014, ST-3 for Oct-2013 to Mar-2014 and Challans for Rs.1,25,231/- and Rs.12,09,943/- to submit that differential service tax amount stands paid by them.

3.3 Appellant has further attached two rent agreements to state that renting to residential dwelling was not service and no service tax was payable.

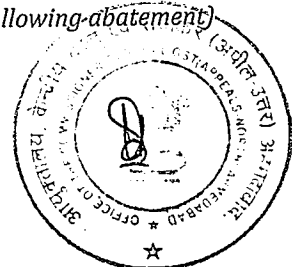
4. In the personal hearing held on 01.12.2017, Shri Kalpesh Patel, Chartered Accountant reiterated the grounds of appeal and made additional written submissions. He stated that Challan for Rs.12,09,943/- has not been considered and no service tax relief has been given on house rent of Rs.6,15,739/-.

5. I have carefully gone through the appeal. The total demand confirmed by the adjudicating authority has THREE parts; demand of Rs.6,91,505/- pertains to mis-declaration of income from construction services, demand of Rs.72,274/- has been calculated on renting income, and demand of Rs.19,823/- has been made in respect of GTA services received.

5.1 **Demand of Rs.6,91,505/- on 'construction of residential and commercial complex' service** – The demand has been confirmed for the years 2010-11 and 2011-12 on the additional amount collected by the appellant and not declared in the ST-3 returns as presented in the table below-

Period	Gross Amount collected as per diary (Rs.)	Gross amount as declared in ST-3 returns (Rs.)	Difference (Rs.)	Service tax payable on differential amount (Rs.)
Oct-2010 to Mar-2011	85,58,224	19,20,000	66,38,224	1,70,934
Apr-2011 to Mar-2012	4,19,73,334	2,17,57,000	2,02,16,334	5,20,571
<b>TOTAL</b>				<b>6,91,505</b>

(Service tax payable has been calculated @ 10.3% after allowing abatement)



5.1.1 The appellant claims that whatever additional amount was found in the diary as on 07.02.2014 was duly recorded in the books of account and service tax has been paid on that. Appellant has submitted a reconciliation statement showing therein amount collected, flat-wise, date-wise, in cash as well in cheque, vis-à-vis amount of cash shown in books of account, year-wise. This way, appellant has tried to show that entire cash collected for booking of units from 01.07.2007 to 07.02.2014 shown in the personal diary was duly accounted for on the day of search (07.02.2014). Appellant has also submitted a group summary of Sundry Debtors, group summary Block-wise and Shop-wise for the period 01.07.2007 to 07.02.2014 and Cash Book ledger for 07.02.2014. According to these details, unaccounted cash collection of Rs.2,67,76,501/- as detected during search on 07.02.2014 was duly taken on record on the same day.

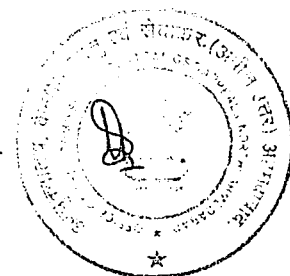
5.1.2 Further, I find that as per ER-3 for Oct-2013 to Mar-2014, appellant has paid service tax of Rs.1,25,231/- and Rs.12,09,943/- in cash vide Challans dated 28.02.2014 and 29.09.2014, respectively. Appellant claims that these two payments are towards additional service tax payable on the unaccounted cash collection and that the adjudicating authority has taken into account the payment of Rs.1,25,231/- but not of Rs.12,09,943/-.

5.1.3 Now, with regard to appellant's contention that they have paid the applicable service tax on unaccounted cash amount, it is not clear how much service tax was payable on the unaccounted cash collection which according to appellant was Rs.2,67,76,501/- and was taken on record on 07.02.2014. Though, the payment of Rs.12,09,743/- paid under Challan dated 29.09.2014 and reflected in the ST-3 return filed for Oct-2013 to Mar-2014 is not deniable, appellant has not given any details of service tax payable on the unaccounted cash collection as per his own ascertainment. Even in appeal, the appellant has not provided any details that can prove that additional duty liability of Rs.6,91,505/- worked out in the show cause notice for the years 2010-11 and 2011-12 stands discharged. Hence, in absence of proper details and documents evidencing payment of Rs.6,91,505/-, I have no reason to interfere with the adjudicating authority's order confirming service tax demand of Rs.6,91,505/-.

5.2 **Demand of Rs.72,274/- on renting of immovable property service** – As noted in para 21 of the impugned order, renting income of Rs.6,15,739/- is from three tenants as detailed below-

(i)	Nettur Technical Foundation	Rs.5,52,739
(ii)	Assam Air Products P Ltd	Rs.31,000
(iii)	Kalptaru Power Transmission P Ltd	Rs.32,000

**Total : Rs.6,15,739/-**



5.2.1 Out of these three, demand pertaining to Assam Air Products P Ltd was dropped in the impugned order itself considering that renting was for residential purpose as per rent agreement. Appellant has now submitted copies of rent agreements with Assam Air Products P Ltd and Nettur Technical Foundation to show that renting was for residential purpose. I find from the rent agreement (Leave & Licence Agreement) with Nettur Technical Training Foundation wherein in para 22 it is clearly mentioned that *premises will be used for residential use only*. In the same agreement however, I find that there is para 3(D) which says that the *Licensee shall pay 12.36% service tax charges separately on the leave & licence fee amount*. Therefore, if the premises were meant to be used for residential purposes, appellant had no right to collect 12.36% service tax separately on the licence fee. I therefore tend to conclude that the appellant has collected rent as if the property was rented out for commercial use and has charged service tax thereon. The demand of service tax of **Rs.68,319/-** on the rent income of Rs.5,52,739/- in such a situation is not unjustified and therefore, I find no infirmity in the adjudicating authority's order in this regard.

5.2.2 Further, since appellant has not produced any rent agreement in case of Kalptaru Power Transmission P Ltd to prove that renting income of Rs.32,000/- pertained to residential use, the appellant is also liable to pay service tax of **Rs.3,955/-**.

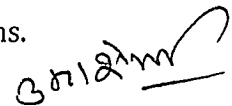
5.3 **Demand of Rs.19,823/- on GTA service** -With regard to this, I find that the appellant has not put forth any argument and therefore I have no option but to maintain the demand of Rs.19,823/-.

5.4 As far as penalties and late fee are concerned, appellant has not contested the same and I therefore have no reason to interfere with the adjudicating authority's order in this regard.

6. In view of foregoing discussion and findings, I uphold the impugned order and reject the appeal.

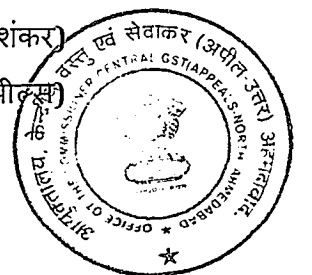
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील)



Date:

Attested

S. Hudda  
(Sanwamal Hudda)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

To,  
M/s. Omkar Corporation,  
A-7, Unique City Homes, Nr. Prasang Party Plot,  
Ghatlodia, Ahmedabad 380 061

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt./Deputy Commissioner, Central Tax Division-VII, Ahmedabad- North.
5. Guard File.
6. P.A.

